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5
6 **UNITED STATES DISTRICT COURT**
7 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
8

9 SON KIM, on behalf of himself and all
others similarly situated,
10 Plaintiff
11 vs.
12 SHOE PALACE CORPORATION,
13 Defendant
14 _____

Case No. 3:23-cv-6632
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. Plaintiff SON KIM (“Plaintiff”), on behalf of himself and others similarly
3 situated, asserts the following claims against SHOE PALACE CORPORATION
4 (“Defendant”) as follows.

5 2. Plaintiff is a visually-impaired and legally blind person who requires
6 screen-reading software to read website content using his computer. Plaintiff uses the
7 terms “blind” or “visually-impaired” to refer to all people with visual impairments who
8 meet the legal definition of blindness in that they have a visual acuity with correction
9 of less than or equal to 20 x 200. Some blind people who meet this definition have
10 limited vision. Others have no vision.

11 3. Based on a 2010 U.S. Census Bureau report, approximately 8.1 million
12 people in the United States are visually impaired, including 2.0 million who are blind.

13 4. “Being unable to access website puts individuals at a great disadvantage
14 in today’s society, which is driven by a dynamic electronic marketplace and
15 unprecedented access to information.” U.S. Dep’t of Justice, Statement of Eve L. Hill
16 before the Senate Comm. on Health, Educ., Labor & Pensions, at 3 (May 14, 2013).

17 5. Plaintiff is a blind, visually impaired handicapped person and a member
18 of a protected class of individuals under the ADA, under 42 U.S.C. § 12102(1)-(2), and
19 the regulations implementing the ADA set forth at 28 CFR §§ 36.101 *et seq.*

20 6. Plaintiff requires screen-reading software to read website content using
21 his computer. Plaintiff uses the terms “blind” or “visually-impaired” to refer to all
22 people with visual impairments who meet the legal definition of blindness in that they
23 have a visual acuity with correction of less than or equal to 20 x 200.

24 7. Plaintiff, individually and on behalf of those similarly situated persons
25 (hereafter “Class Members”), bring this Class Action to secure redress against
26 Defendant SHOE PALACE CORPORATION (“Defendant”), for its failure to design,
27 construct, maintain, and operate its website to be fully and equally accessible to and
28 independently usable by Plaintiff and other blind or visually-impaired people.

1 Defendant's denial of full and equal access to its website, and therefore denial of its
2 products and services offered thereby and in conjunction with its physical locations, is
3 a violation of Plaintiffs' rights under the Americans with Disabilities Act ("ADA") and
4 California's Unruh Civil Rights Act ("UCRA").

5 8. Plaintiff brings this civil rights action against Defendant to enforce Title
6 III of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. ("Title III"), which
7 requires, among other things, that a public accommodation (1) not deny persons with
8 disabilities the benefits of its services, facilities, privileges and advantages; (2) provide
9 such persons with benefits that are equal to those provided to nondisabled persons; (3)
10 provide auxiliary aids and services—including electronic services for use with a
11 computer screen reading program—where necessary to ensure effective
12 communication with individuals with a visual disability, and to ensure that such
13 persons are not excluded, denied services, segregated or otherwise treated differently
14 than sighted individuals; and (4) utilize administrative methods, practices, and policies
15 that provide persons with disabilities equal access to online content.

16 9. Because Defendant's website, www.shoepalace.com, (the "Website" or
17 "Defendant's website"), is not fully or equally accessible to blind and visually-
18 impaired consumers in violation of the ADA, Plaintiff invokes 42 U.S.C. § 12188(a)(2)
19 and seeks a permanent injunction requiring:

20 (a) that SHOE PALACE CORPORATION retain a qualified
21 consultant acceptable to Plaintiff ("Mutually Agreed Upon Consultant") who shall
22 assist it in improving the accessibility of its Website so the goods and services on them
23 may be equally accessed and enjoyed by individuals with vision related disabilities;

24 (b) that SHOE PALACE CORPORATION work with the Mutually
25 Agreed Upon Consultant to ensure that all employees involved in website development
26 and content development be given web accessibility training on a periodic basis,
27 including onsite training to create accessible content at the design and development
28 stages;

1 (c) that SHOE PALACE CORPORATION work with the Mutually
2 Agreed Upon Consultant to perform an automated accessibility audit on a periodic
3 basis to evaluate whether SHOE PALACE CORPORATION's Website may be equally
4 accessed and enjoyed by individuals with vision related disabilities on an ongoing
5 basis;

6 (d) that SHOE PALACE CORPORATION work with the Mutually
7 Agreed Upon Consultant to perform end-user accessibility/usability testing on a
8 periodic basis with said testing to be performed by individuals with various disabilities
9 to evaluate whether SHOE PALACE CORPORATION's Website may be equally
10 accessed and enjoyed by individuals with vision related disabilities on an ongoing
11 basis;

12 (e) that SHOE PALACE CORPORATION work with the Mutually
13 Agreed Upon Consultant to create an accessibility policy that will be posted on its
14 Website, along with an e-mail address and tollfree phone number to report
15 accessibility-related problems; and

16 (f) that Plaintiff, their counsel and its experts monitor Defendant's
17 Website for up to two years after the Mutually Agreed Upon Consultant validates it is
18 free of accessibility errors/violations to ensure SHOE PALACE CORPORATION has
19 adopted and implemented adequate accessibility policies.

20 10. Web-based technologies have features and content that are modified on a
21 daily, and in some instances, an hourly, basis, and a one time "fix" to an inaccessible
22 website will not cause the website to remain accessible without a corresponding change
23 in corporate policies related to those web-based technologies. To evaluate whether an
24 inaccessible website has been rendered accessible, and whether corporate policies
25 related to web-based technologies have been changed in a meaningful manner that will
26 cause the website to remain accessible, the website must be reviewed on a periodic
27 basis using both automated accessibility screening tools and end user testing by
28 disabled individuals.

1 and equal enjoyment of goods and services offered at Defendant's brick-and mortar
2 stores.

3 15. This Court also has personal jurisdiction over Defendant because it
4 conducts and continues to conduct a substantial and significant amount of business in
5 the State of California, County of Alameda, and because Defendant's offending website
6 is available across California.

7 16. Venue is proper in this district under 28 U.S.C. §1391(b)(1) and (2)
8 because Defendant conducts and continues to conduct a substantial and significant
9 amount of business in this District, Defendant is subject to personal jurisdiction in this
10 District, and a substantial portion of the conduct complained of herein occurred in this
11 District.

12 17. The United States Department of Justice Civil Rights Division has
13 recently provided "Guidance on Web Accessibility and the ADA." It states in part, "the
14 Department has consistently taken the position that the ADA's requirements apply to
15 all the goods, services, privileges, or activities offered by public accommodations,
16 including those offered on the web."

17 18. This Court is empowered to issue a declaratory judgment under 28 U.S.C.
18 §§ 2201 and 2202.

19 19. This lawsuit is aimed at providing legally blind users like the Plaintiff a
20 full and equal experience.

21 STANDING

22 20. Plaintiff SON KIM, is a blind, visually-impaired handicapped person and
23 a member of a protected class of individuals under the ADA, under 42 U.S.C. §
24 12102(1)-(2), and the regulations implementing the ADA set forth at 28 CFR §§ 36.101
25 *et seq.*

26 21. Consumers such as the Plaintiff may purchase Defendant's products and
27 access other brand related content and services at www.shoepalace.com ("Website"),
28 the Website Defendant owns, operates, and controls.

1 22. In addition to researching and purchasing Defendant's products and
2 services from the comfort and convenience of their homes, consumers may also use
3 Defendant's Website to sign up to receive product updates, discounts, product news,
4 and receive special promotions not available elsewhere.

5 23. Plaintiff was injured when he attempted on October 30, 2023 and again
6 on November 3, 2023 to access Defendant's Website from his home in an effort to shop
7 for Defendant's products, as well as determine if these products were available in stores
8 near him, but encountered barriers that denied him full and equal access to Defendant's
9 online goods, content and services.

10 24. Specifically, the Plaintiff wanted to purchase the Air Jordan 2 Retro Black
11 Cement Mens Lifestyle Shoes.

12 25. Plaintiff's desire for this product was due to the fact that he wanted to buy
13 a new pair of branded footwear, that could be suitable for both sports and casual outfits.

14 26. This Website and physical store holds themselves out as a platform
15 specializing in athletic footwear, apparel, and accessories. The website is known for its
16 diverse selection of brands and products, carrying exclusive items and latest trends in
17 athletic footwear and apparel. Therefore, Plaintiff desired to buy footwear from the
18 Website and/or the physical store.

19 27. Due to Defendant's failure to build the Website in a manner that is
20 compatible with screen access programs, Plaintiff was unable to understand and
21 properly interact with the Website, and was thus denied the benefit of purchasing the
22 Air Jordan 2 Retro Black Cement Mens Lifestyle Shoes, he wished to acquire.

23 28. The law requires that the Defendant reasonably accommodate Plaintiff's
24 disabilities by removing these existing access barriers.

25 29. Plaintiff has been, and in absence of an injunction will continue to be
26 injured by Defendant's failure to provide its online content and services in a manner
27 that is compatible with screen reader technology.
28

1 35. For screen-reading software to function, the information on a website
2 must be capable of being rendered into text. If the website content is not capable of
3 being rendered into text, the visually impaired user is unable to access the same content
4 available to sighted users.

5 36. The international website standards organization, the World Wide Web
6 Consortium, known throughout the world as W3C, has published version 2.1 of the
7 Web Content Accessibility Guidelines (“WCAG 2.1”). WCAG 2.1 are well-established
8 guidelines for making website accessible to blind and visually impaired people. These
9 guidelines are universally followed by most large business entities and government
10 agencies to ensure their website are accessible.

11 37. Non-compliant websites pose common access barriers to blind and
12 visually-impaired persons. Common barriers encountered by blind and visually
13 impaired persons include, but are not limited to, the following:

- 14 a. A text equivalent for every non-text element is not provided;
- 15 b. Title frames with text are not provided for identification and
16 navigation;
- 17 c. Equivalent text is not provided when using scripts;
- 18 d. Forms with the same information and functionality as for sighted
19 persons are not provided;
- 20 e. Information about the meaning and structure of content is not
21 conveyed by more than the visual presentation of content;
- 22 f. Text cannot be resized without assistive technology up to 200%
23 without losing content or functionality;
- 24 g. If the content enforces a time limit, the user is not able to extend,
25 adjust or disable it;
- 26 h. Web pages do not have titles that describe the topic or purpose;
- 27 i. The purpose of each link cannot be determined from the link text
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1 alone or from the link text and its programmatically determined link
2 context;

3 j. One or more keyboard operable user interface lacks a mode of
4 operation where the keyboard focus indicator is discernible;

5 k. The default human language of each web page cannot be
6 programmatically determined;

7 l. When a component receives focus, it may initiate a change in
8 context;

9 m. Changing the setting of a user interface component may
10 automatically cause a change of context where the user has not been
11 advised before using the component;

12 n. Labels or instructions are not provided when content requires user
13 input, which include captcha prompts that require the user to verify that
14 he or she is not a robot;

15 o. In content which is implemented by using markup languages,
16 elements do not have complete start and end tags, elements are not nested
17 according to their specifications, elements may contain duplicate
18 attributes, and/or any IDs are not unique;

19 p. Inaccessible Portable Document Format (PDFs); and,

20 q. The name and role of all User Interface elements cannot be
21 programmatically determined; items that can be set by the user cannot be
22 programmatically set; and/or notification of changes to these items is not
23 available to user agents, including assistive technology.

24 38. Websites have features and content that are modified on a daily, and in
25 some instances hourly basis and a one time “fix” to an inaccessible digital platform
26 will not cause the digital platform to remain accessible without a corresponding in
27 change in corporate policies related to those web-based technologies. To evaluate
28

1 whether an inaccessible website has been rendered accessible, and whether corporate
2 policies related to website technologies have been changes in a meaningful manner that
3 will cause the Website to remain accessible, the Website must be reviewed on a
4 periodic basis using both automated accessibility screening tools and end user testing
5 by disabled individuals.

6 39. Each of Defendant's violations of the Americans with Disabilities Act is
7 likewise a violation of the Unruh Civil Rights Act. Indeed, the Unruh Civil Rights Act
8 provides that any violation of the ADA constitutes a violation of the Unruh Civil Rights
9 Act. Cal. Civ. Code, § 51(f).

10 40. Further, Defendant's actions and inactions denied Plaintiff full and equal
11 access to their accommodations, facilities, and services. A substantial motivating factor
12 for Defendant to deny Plaintiff access was the perception of Plaintiff's disability.
13 Defendant's denial of Plaintiff's accessibility was a substantial motivating factor for
14 Defendant's conduct. Plaintiff was harmed due to Defendant's conduct. Defendant's
15 actions and inactions were a substantial factor in causing the lack of access to Plaintiff.
16 Unruh Civil Rights Act. Cal. Civ. Code, § 51.

17 **STATEMENT OF FACTS**

18 41. Defendant is a footwear store that offers the website
19 www.shoepalace.com to the public. The Website offers features which should allow
20 all consumers to access the goods and services offered in connection with its physical
21 locations. The goods and services offered by Defendant include, but are not limited to
22 the following: footwear and accessories; the ability to find store locations, access
23 information about order status, returns, discounts, shipping and delivery options, and
24 other products and services that are available for purchase online and in store
25 locations.

26 42. It is, upon information and belief, Defendant's policy and practice to deny
27 Plaintiff, along with other blind or visually impaired users, access to Defendant's
28 Website, and to therefore specifically deny the goods and services that are offered and

1 integrated with Defendant's stores. Due to Defendant's failure and refusal to remove
2 access barriers to its website, Plaintiff and visually impaired persons have been and are
3 still being denied equal access to Defendant's stores and the numerous goods, services
4 and benefits offered to the public through its website.

5 43. Plaintiff is a visually-impaired and legally blind person, who cannot use a
6 computer without the assistance of screen-reading software. Plaintiff is, however, a
7 proficient NVDA screen-reader user and uses it to access the Internet. Plaintiff has
8 visited the Website October 30, 2023 and again on November 3, 2023 using a screen-
9 reader.

10 44. Plaintiff intended to purchase the Air Jordan 2 Retro Black Cement Mens
11 Lifestyle Shoes.

12 45. Plaintiff's desire for this product was due to the fact that he wanted to buy
13 a new pair of branded footwear, that could be suitable for both sports and casual outfits.

14 46. On October 30, 2023 and again on November 3, 2023 Plaintiff visited
15 Defendant's website, www.shoepalace.com, to purchase the Air Jordan 2 Retro Black
16 Cement Mens Lifestyle Shoes. Despite his efforts, however, Plaintiff was denied a
17 shopping experience similar to that of a sighted individual due to the website's lack of
18 a variety of features and accommodations, which effectively barred Plaintiff from
19 having an unimpeded shopping experience.

20 47. Additionally, during Plaintiff's visits to the Website, Plaintiff encountered
21 multiple access barriers that denied him full and equal access to the facilities, goods
22 and services offered by Defendant to the public. Plaintiff was thus unable to: learn
23 about store locations and hours and contact information; make an online purchase,
24 determine prices for and availability of certain products, and related goods and services
25 available both online and in stores.

26 48. Due to Defendant's failure to build its website in a manner that is
27 compatible with screen reader programs, Plaintiff is and was unable to understand, and
28

1 thus is denied the benefit of, much of the content and services he wishes to access or
2 use. For example:

3 (a) Many features on the Website lacks alt. text, which is the invisible
4 code embedded beneath a graphical image. As a result, Plaintiff was unable to
5 differentiate what products were on the screen due to the failure of the Website to
6 adequately describe its content.

7 (b) Many features on the Website also fail to Add a label element or
8 title attribute for each field. This is a problem for the visually impaired because the
9 screen reader fails to communicate the purpose of the page element. It also leads to the
10 user not being able to understand what he or she is expected to insert into the subject
11 field.

12 (c) The Website also contains a host of broken links, which is a
13 hyperlink to a non-existent or empty webpage. For the visually impaired this is
14 especially paralyzing due to the inability to navigate or otherwise determine where one
15 is on the website once a broken link is encountered.

16 49. As a result of visiting Defendant's Website and from investigations
17 performed on his behalf, Plaintiff is aware that the Website includes at least the
18 following additional barriers blocking his full and equal use:

19 (a) The Website does not provide a text equivalent for every non-text
20 element;

21 (b) The purpose of each link cannot be determined from the link text
22 alone or from the link text and its programmatically determined link context;

23 (c) Web pages lack titles that describe their topic or purpose;

24 (d) Headings and labels do not describe topic or purpose;

25 (e) Keyboard user interfaces lack a mode of operation where the
26 keyboard focus indicator is visible;

27 (f) The default human language of each web page cannot be
28 programmatically determined;

1 (g) The human language of each passage or phrase in the content
2 cannot be programmatically determined;

3 (h) Labels or instructions are not always provided when content
4 requires user input;

5 (i) Text cannot be resized up to 200 percent without assistive
6 technology so that it may still be viewed without loss of content or functionality;

7 (j) A mechanism is not always available to bypass blocks of content
8 that are repeated on multiple web pages;

9 (k) A correct reading sequence is not provided on pages where the
10 sequence in which content is presented affects its meaning;

11 (l) In content implemented using markup languages, elements do not
12 always have complete start and end tags, are not nested according to their
13 specifications, may contain duplicate attributes, and IDs are not always unique; and

14 (m) The name and role of all UI elements cannot be programmatically
15 determined; things that can be set by the user cannot be programmatically set; and/or
16 notification of changes to these items is not available to user agents, including assistive
17 technology.

18 50. Due to the inaccessibility of Defendant's Website, blind and visually
19 impaired individuals such as Plaintiff, who need screen-readers, cannot fully and
20 equally use or enjoy the facilities, products, and services Defendant offers to the public
21 through its website. The access barriers Plaintiff encountered have caused a denial of
22 Plaintiff's full and equal access in the past, and now deter Plaintiff on a regular basis
23 from visiting the Website in order to perform functions equal to the sighted.

24 51. These access barriers on Defendant's Website have deterred Plaintiff from
25 visiting Defendant's physical locations and enjoying them equal to sighted individuals
26 because: Plaintiff was unable to find the location and hours of operation of Defendant's
27 stores on its website and other important information, preventing Plaintiff from visiting
28 the locations to take advantage of the goods and services that it provides to the public.

1 52. If the Website were equally accessible to all, Plaintiff could independently
2 navigate the Website and complete a desired transaction as sighted individuals do. In
3 fact, Plaintiff intends to return to the Website when it is equally accessible for visually-
4 impaired consumers in order to complete his intended transaction, as it is more
5 convenient for Plaintiff to access the Website to make a purchase than to travel to a
6 physical location to make the same purchase. However, as long as the Access Barriers
7 continue to exist on the Website, Plaintiff is prevented from making such a purchase.

8 53. These barriers, and others, deny Plaintiff full and equal access to all of the
9 services the Website offers, and now deter him from attempting to use the Website
10 and/or visit Defendant physical stores. Still, Plaintiff would like to, and intends to,
11 attempt to access Defendant's Website in the future to research the services the Website
12 offers, or to test the Website for compliance with the ADA.

13 54. Due to Defendant's failure and refusal to remove access barriers to its
14 Website, Plaintiff and visually impaired persons have been and are still being denied
15 equal access to Defendant's Website, and the numerous goods and services and benefits
16 offered to the public through its website.

17 55. Through his attempts to use the Website, Plaintiff has actual knowledge
18 of the access barriers that make these services inaccessible and independently unusable
19 by blind and visually impaired people.

20 56. Though Defendant may have centralized policies regarding the
21 maintenance and operation of its Website, upon and information and belief, Defendant
22 has never had a plan or policy that is reasonably calculated to make its Website fully
23 accessible to, and independently usable by, individuals with vision related disabilities.
24 As a result, the complained of access barriers are permanent in nature and likely to
25 persist.

26 57. The law requires that Defendant reasonably accommodate Plaintiff's
27 disabilities by removing these existing access barriers. Removal of the barriers
28

1 identified above is readily achievable and may be carried out without much difficulty
2 or expense.

3 58. Plaintiff's above request for injunctive relief is consistent with the work
4 performed by the United States Department of Justice, Department of Transportation,
5 and U.S. Architectural and Transportation Barriers Compliance Board (the "Access
6 Board"), all of whom have relied upon or mandated that the public-facing pages of
7 website complies with an international compliance standard known as Web Content
8 Accessibility Guidelines version 2.1 AA ("WCAG 2.1 AA"), which is published by an
9 independent third party known as the Worldwide Web Consortium ("W3C").

10 59. Plaintiff and the Class have been, and in the absence of an injunction will
11 continue to be, injured by Defendant's failure to provide its online content and services
12 in a manner that is compatible with screen reader technology.

13 60. Defendant has long known that screen reader technology is necessary for
14 individuals with visual disabilities to access its online content and services, and that it
15 is legally responsible for providing the same in a manner that is compatible with these
16 auxiliary aids.

17 61. The ADA expressly contemplates the injunctive relief that Plaintiff seeks
18 in this action. In relevant part, the ADA requires:

19 62. In the case of violations of . . . this title, injunctive relief shall include an
20 order to alter facilities to make such facilities readily accessible to and usable by
21 individuals with disabilities . . . Where appropriate, injunctive relief shall also include
22 requiring the . . . modification of a policy . . .

23 42 U.S.C. § 12188(a)(2).

24 63. Plaintiff alleges violations of existing and longstanding statutory and
25 regulatory requirements to provide auxiliary aids or services necessary to ensure
26 effective communication, and courts routinely decide these types of matters.

27 64. Resolution of Plaintiff's claims does not require the Court to unravel
28 intricate, technical facts, but rather involves consideration of facts within the

1 conventional competence of the courts, e.g. (a) whether Defendant offers content and
 2 services on its Website, and (b) whether Plaintiff can access the content and services.

3 65. Without injunctive relief, Plaintiff and other visually impaired consumers
 4 will continue to be unable to independently use the Website, thereby violating their
 5 rights.

6 **CLASS ACTION ALLEGATIONS**

7 66. Plaintiff, on behalf of himself and all others similarly situated, seeks to
 8 certify a nationwide class under Fed. R. Civ. P. 23(a) and 23(b)(2): all legally blind
 9 individuals in the United States who have attempted to access Defendant's Website and
 10 as a result have been denied access to the equal enjoyment of goods and services, during
 11 the relevant statutory period.

12 67. Common questions of law and fact exist amongst the Class, including:

13 (a) Whether Defendant's Website is a "public accommodation" under
 14 the ADA;

15 (b) Whether Defendant's Website denies the full and equal enjoyment
 16 of its products, services, facilities, privileges, advantages, or accommodations to people
 17 with visual disabilities, thereby violating the ADA.

18 68. Plaintiff's claims are typical of the Class. The Class, like Plaintiff, are
 19 visually impaired or otherwise blind, and claim that Defendant has violated the ADA
 20 by failing to remove access barriers on its Website so it can be independently accessible
 21 to the Class.

22 69. Plaintiff will fairly and adequately represent and protect the interests of
 23 the Class Members because Plaintiff has retained and is represented by counsel
 24 competent and experienced in complex class action litigation, and because Plaintiff has
 25 no interests antagonistic to Class Members.

26 70. Class certification of the claims is appropriate under Fed. R. Civ. P.
 27 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable
 28

1 to the Class, making appropriate both declaratory and injunctive relief with respect to
2 the Class as a whole.

3 71. Alternatively, class certification is appropriate under Fed. R. Civ. P.
4 23(b)(3) because fact and legal questions common to Class Members predominate over
5 questions affecting only individual Class Members, and because a class action is
6 superior to other available methods for the fair and efficient adjudication of this
7 litigation.

8 72. Judicial economy will be served by maintaining this lawsuit as a class
9 action in that it is likely to avoid the burden that would be otherwise placed upon the
10 judicial system by the filing of numerous similar suits throughout the United States.

11 **FIRST CAUSE OF ACTION**

12 **Violations of the ADA, 42 U.S.C. § 12181 *et seq.***

13 73. Plaintiff, on behalf of himself and the Class Members, repeats and
14 realleges every allegation of the preceding paragraphs as if fully set forth herein.

15 74. Section 302(a) of Title III of the ADA, 42 U.S.C. § 12101 *et seq.*,
16 provides:

17 75. No individual shall be discriminated against on the basis of disability in
18 the full and equal enjoyment of the goods, services, facilities, privileges, advantages,
19 or accommodations of any place of public accommodation by any person who owns,
20 leases (or leases to), or operates a place of public accommodation. 42 U.S.C. §
21 12182(a).

22 76. Defendant's physical locations are a public accommodation within the
23 definition of Title III of the ADA, 42 U.S.C. § 12181(7). The Website is a service that
24 is offered to the general public, and as such, must be equally accessible to all potential
25 consumers.

26 77. Under Section 302(b)(1) of Title III of the ADA, it is unlawful
27 discrimination to deny individuals with disabilities the opportunity to participate in or
28

1 benefit from the products, services, facilities, privileges, advantages, or
2 accommodations of an entity. 42 U.S.C. § 12182(b)(1)(A)(i).

3 78. Under Section 302(b)(1) of Title III of the ADA, it is unlawful
4 discrimination to deny individuals with disabilities an opportunity to participate in or
5 benefit from the products, services, facilities, privileges, advantages, or
6 accommodation, which is equal to the opportunities afforded to other individuals. 42
7 U.S.C. § 12182(b)(1)(A)(ii).

8 79. Under Section 302(b)(2) of Title III of the ADA, unlawful discrimination
9 also includes, among other things:

10 80. [A] failure to make reasonable modifications in policies, practices, or
11 procedures, when such modifications are necessary to afford such goods, services,
12 facilities, privileges, advantages, or accommodations to individuals with disabilities,
13 unless the entity can demonstrate that making such modifications would fundamentally
14 alter the nature of such goods, services, facilities, privileges, advantages or
15 accommodations; and a failure to take such steps as may be necessary to ensure that no
16 individual with a disability is excluded, denied services, segregated or otherwise treated
17 differently than other individuals because of the absence of auxiliary aids and services,
18 unless the entity can demonstrate that taking such steps would fundamentally alter the
19 nature of the good, service, facility, privilege, advantage, or accommodation being
20 offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(ii)-(iii).

21 81. The acts alleged herein constitute violations of Title III of the ADA, and
22 the regulations promulgated thereunder. Plaintiff, who is a member of a protected class
23 of persons under the ADA, has a physical disability that substantially limits the major
24 life activity of sight within the meaning of 42 U.S.C. § 12102(1)(A)-(2)(A).
25 Furthermore, Plaintiff has been denied full and equal access to the Website, has not
26 been provided services that are provided to other patrons who are not disabled, and has
27 not been provided any reasonable accommodation to those services. Defendant has
28

1 failed to take any prompt and equitable steps to remedy its discriminatory conduct.
 2 These violations are ongoing.

3 82. Under 42 U.S.C. § 12188 and the remedies, procedures, and rights set
 4 forth and incorporated therein, Plaintiff, requests relief as set forth below.

5 **SECOND CAUSE OF ACTION**

6 **Violations of the Unruh Civil Rights Act, California Civil Code § 51 et seq.**

7 83. Plaintiff, on behalf of himself and the Class Members, repeats and
 8 realleges every allegation of the preceding paragraphs as if fully set forth herein.

9 84. Defendant's locations are "business establishments" within the meaning
 10 of the California Civil Code § 51 et seq. Defendant generates millions of dollars in
 11 revenue from the sale of its services in California through its store's locations and
 12 related services and www.shoepalace.com is a service provided by Defendant that is
 13 inaccessible to customers who are visually-impaired like Plaintiff and Class Members.
 14 This inaccessibility denies visually-impaired customers full and equal access to
 15 Defendant's facilities and services that Defendant makes available to the non-disabled
 16 public. Defendant is violating the Unruh Civil Rights Act, California Civil Code § 51
 17 et seq., in that Defendant is denying visually impaired customers the services provided
 18 by www.shoepalace.com. These violations are ongoing.

19 85. Defendant's actions constitute intentional discrimination against Plaintiff
 20 and Class Members on the basis of a disability in violation of the Unruh Civil Rights
 21 Act, Cal. Civil Code § 51 et seq. in that: Defendant has constructed a website that is
 22 inaccessible to Plaintiff and Class Members; maintains the website in this inaccessible
 23 form; and has failed to take adequate actions to correct these barriers even after being
 24 notified of the discrimination that such barriers cause.

25 86. Defendant is also violating the Unruh Civil Rights Act, California Civil
 26 Code § 51 in that the conduct alleged herein likewise constitutes a violation of various
 27 provisions of the ADA, 42 U.S.C. § 12101 et seq. Section 51(f) of the California Civil
 28

1 Code provides that a violation of the right of any individual under the ADA shall also
2 constitute a violation of the Unruh Civil Rights Act.

3 87. The actions of Defendant were and are in violation of the Unruh Civil
4 Rights Act, California Civil Code § 51 et seq., and, therefore, Plaintiff and Class
5 Members are entitled to injunctive relief remedying the discrimination.

6 88. Plaintiff and Class Members are also entitled to statutory minimum
7 damages pursuant to California Civil Code § 52 for each and every offense.

8 89. Plaintiff and Class Members are also entitled to reasonable attorneys' fees
9 and costs.

10 90. Plaintiff and Class Members are also entitled to a preliminary and
11 permanent injunction enjoining Defendant from violating the Unruh Civil Rights Act,
12 California Civil Code § 51 et seq., and requiring Defendant to take the steps necessary
13 to make www.tadashishoji.com readily accessible to and usable by visually-impaired
14 individuals.

15 **THIRD CAUSE OF ACTION**

16 **DECLARATORY RELIEF**

17 91. Plaintiff, on behalf of himself and the Class Members, repeats and
18 realleges every allegation of the preceding paragraphs as if fully set forth herein.

19 92. An actual controversy has arisen and now exists between the parties in
20 that Plaintiff contends, and is informed and believes that Defendant denies, that its
21 Website contains access barriers denying blind customers the full and equal access to
22 the products, services and facilities of its Website, which Defendant owns, operations
23 and controls, fails to comply with applicable laws including, but not limited to, Title
24 III of the Americans with Disabilities Act, 42 U.S.C. § 12182, *et seq.* prohibiting
25 discrimination against the blind.

26 93. A judicial declaration is necessary and appropriate at this time in order
27 that each of the parties may know their respective rights and duties and act accordingly.
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court grant the following relief:

94. A Declaratory Judgment that at the commencement of this action SHOE PALACE CORPORATION was in violation of the specific requirements of Title III of the ADA described above, and the relevant implementing regulations of the ADA, in that SHOE PALACE CORPORATION took no action that was reasonably calculated to ensure that its website is fully accessible to, and independently usable by, individuals with visual disabilities;

95. A preliminary and permanent injunction pursuant to 42 U.S.C. § 12188(a)(1) and (2) and section 52.1 of the California Civil Code enjoining Defendant from violating the Unruh Civil Rights Act and ADA and requiring Defendant to take the steps necessary to make www.shoepalace.com readily accessible to and usable by visually-impaired individuals;

96. An award of costs and expenses of this action;

97. An award of statutory minimum damages of \$4,000 per offense per person pursuant to section 52(a) of the California Civil Code.

98. For attorneys' fees and expenses pursuant to California Civil Code §§ 52(a), 52.1(h), and 42 U.S.C. § 12205; An order certifying the Class under Fed. R. Civ. P. 23(a) & (b)(2) and/or (b)(3), appointing Plaintiff as Class Representative, and his attorneys as Class Counsel; and

99. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial for all claims so triable.

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3 Dated: December 26, 2023

4 Respectfully Submitted,
5 Oceanside Law Center APC
6 /s/Robert Sibia, Esq.
7 Robert Sibia, Esq.
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